Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Digital Audio Broadcasting Systems And	)	MM Docket No. 99-325
Their Impact on the Terrestrial Radio	)	
Broadcast Service	)	
	)	

REPLY COMMENTS OF AMERICAN FEDERATION OF MUSICIANS, AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, FUTURE OF MUSIC COALITION, THE RECORDING ACADEMY, RECORDING ARTISTS' COALITION

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August 2, 2004

TABLE OF CONTENTS

I. Introduction

The following reply comments were developed by a broad coalition of organizations that are concerned with the rights of recording artists, and that represent thousands of individual music professionals. As the Commission hears from many perspectives about Digital Audio Broadcasting ("DAB"), our coalition seeks to ensure that the Commission takes into account the unified voices of those who create the most important content for DAB – the singers, musicians, producers and other artists whose inspiration and talent provide the music transmitted over the public airwaves.

The commenters include associations, unions and a policy think tank that all seek to promote artists' rights.

The American Federation of Television and Radio Artists ("AFTRA") is a national labor organization representing approximately 80,000 performers and newspersons that are employed in the news, entertainment, advertising and sound recording industries. AFTRA's membership includes more than 11,000 recording artists, including more than 4,500 singers who have a royalty contract with a record label and roughly 6,500 singers who are not signed to a royalty contract.

The American Federation of Musicians of the United States and Canada ("AFM") is an international labor organization composed of over 250 Locals across the United States and Canada, with over 100,000 professional musician members. AFM members perform

live music of every genre and in every size and type of venue and include over 10,000 musicians actively involved in recording music as featured artists or studio musicians.

The Recording Artists Coalition ("RAC") is a nonprofit coalition formed to represent artists with regard to legislative issues and to address other public policy debates that come before the music industry.

The Future of Music Coalition ("FMC") is a nonprofit organization that identifies, examines and translates the challenging issues at the intersection of music, law, technology and policy for musicians and citizens.

The Recording Academy®, known internationally for the GRAMMY® Awards, is an organization of thousands of singers, songwriters, musicians, producers and engineers. The Academy's GRAMMY Cultural Policy Initiative advances the rights of the music community through advocacy, education and dialogue.

Together, these organizations (the "Recording Artist Groups") represent most of the recording professionals in the country.

The Recording Artist Groups support DAB. Recording musicians and vocalists and other music professionals see great potential for increased access to the airwaves, greater musical diversity and more localism. Equally important, we see the potential to create a

DAB broadcast system that avoids today's problems in analog radio – and that does not allow new problems, specific to DAB, to develop.

The artists' representatives wish to work with the Commission to create such a system. To begin that process, we have explained our various concerns in some detail below. In Part II, we explain why the DAB process must be informed by the broader policy debates surrounding media ownership, localism and diversity. In Part III, we explain why it is important that another problem of the analog radio industry – payola – must not be allowed to invade DAB. In Part IV, we explain our concerns that DAB may pose serious risks to our (already limited) ability to earn a living recording music. And in Part V, we explain why a performance right as well as DAB content protection and usage rules are necessary to protect fair compensation for the creative music professionals who provide the backbone of the broadcast industry.

II. Concerns About Digital Audio Broadcast Transition in Light of Current Media Ownership Issues

The Recording Artist Groups have a very fundamental concern about the Commission's ongoing DAB proceeding. We believe that the Public Interest Coalition was correct in its initial comments to focus attention on how the transition to DAB will impact citizens, and we add our concern that the Commission must also consider closely how the transition to DAB will impact artists and the recording industry. We urge the

Commission to recognize this transition to digital radio as an unparalleled moment in media history and to act with appropriate deliberation.

DAB will enable terrestrial broadcasters to use their allotted spectrum extremely efficiently and that, in turn, will make it very easy for broadcasters to establish secondary broadcasts on side-channels. While we are excited about the impact this will have on what has, to this point, been limited spectrum, we are very concerned that this Commission is ready to hand this valuable public resource to incumbent broadcasters without condition. We urge this Commission to weigh the impact of such a decision. Giving incumbent broadcasters the right to use their licenses to establish multiple broadcast channels may mean more content, but will it mean more competition, more localism, more diversity? The Commission must recognize that we are about to enter a new age in radio, one in which incumbent broadcasters must agree to meet new standards that embrace and fulfill the fundamental obligations to enhance competition, localism and diversity. DAB transition, especially the authorization of differentiated services like multi-cast and subscription stations, must be part of the overall media ownership proceedings and cannot properly be considered separately. If a piece of spectrum can now transmit more and varied broadcasts, the decision of who is licensed to make these new transmissions is clearly an ownership issue.

Media ownership issues also influence how these new services should be used. Since we have a limited amount of spectrum and many possible broadcasters, should we mandate that additional signals be used for broadcasting to the local community rather than

permitting a licensee to earn revenue by renting out the additional signals to private companies who do not even plan to broadcast to the local citizenry (e.g., should a licensee be permitted to rent its signal pipes for personal pecuniary gain to GM to update the software in GM cars when someone wants to use the signal to broadcast for the benefit of the entire community)? Should licensees be able to charge the public for access to their own public airwaves by providing subscription services? If subscription services are permitted, who should get this revenue – the FCC, the licensee, the community, an arts fund? Clearly there are many fundamental questions about ownership and licensee responsibilities that need to be addressed by the Commission during this stage in the DAB transition.

A. Current Media Ownership Debates Must Inform This Proceeding

The Commission has an exhaustive record on the current state of media today, including the results of the biennial ownership review, the work of the localism task force and transcripts from extensive local hearings, not to mention activities outside the Commission including Congressional action, discussion in the press and the Third Circuit Court of Appeals' ruling on media ownership. Media ownership is widely acknowledged to be more of a mainstream, hot-button issue than ever before.

There is widespread concern that the massive consolidation of the commercial radio industry that resulted from the 1996 Telecommunications Act has had a devastating impact on the traditional regulatory goals of localism, competition and diversity. In the

recent past, many groups have asked the Commission to explore and account for disturbing industry trends, including, among others:

- the elimination of local independent radio station owners,
- the disappearance of vast elements of American culture – such as jazz and classical music – from the airwaves,
- structural payola that blocks local and independent artists from radio because they cannot afford the hundreds of thousands of dollars in "promotional" fees required to become eligible for airplay,
- the impact of voicetracking and constricted playlists, and
- the vertical integration of radio with other critical aspects of the music industry, including the concert industry.

Some of these issues can be, and are being, addressed directly by the Commission. The Commission wisely declined to increase the local radio ownership cap in the media ownership proceeding, for example, and should be lauded for moving ahead in a timely fashion with issuing low power FM radio licenses. Similarly, we support the Commission's efforts to seek a greater understanding of how citizens think about local media both through expanded field hearings and the *Notice of Inquiry* into localism.

The Commission, therefore, is faced with both a challenge and an opportunity regarding the transition to digital audio broadcasting. The challenge is that policymakers and the public are extraordinarily concerned about the current state of terrestrial radio, particularly as it relates to the traditional goals of localism, competition and diversity.

The Recording Artist Groups continue to argue that these concerns are directly attributable to the massive transformation of ownership from small, locally owned broadcasters to huge national conglomerates.

The opportunity facing the Commission is that the transition to DAB provides a once-in-a-lifetime opportunity to craft a regulatory and technological framework that provides solutions to some of these critical challenges.

At this point, however, there is little evidence that the Commission seems interested in utilizing this DAB transition as a way to address the fundamental flaws in the existing radio landscape. Rather, the Recording Artist Groups are concerned that the Commission is essentially allowing the incumbent broadcasters to design and deploy DAB technology as they see fit, with little acknowledgement of the concern expressed by policymakers, stakeholders and citizens about the current state of the industry.

Our concern is less about the transitional technologies that allow for better sound quality for existing stations. Our greater concern is that the same incumbents who control terrestrial radio are on the road to being rewarded by the Commission with not only the ability to leverage their radio licenses into additional signals and revenue streams, but also the ability to design and implement these technologies with little input from the public or the recording artists whose creative work forms the bedrock of the broadcast industry. We urge the Commission to understand the magnitude of this transition and engage all stakeholders in the policymaking process.

III. Digital Audio Broadcasting and Payola

In paragraph 40 of the *NPRM,* the Commission specifically asked about the need for payola regulations in DAB. The payola regulations must be extended to DAB, and in fact, both digital and analog regulations must be revisited and tightened to prevent new types of payola from emerging.

Payola has been a blight on analog radio for almost 50 years. In whatever form, it perverts the principles of fairness, meritocracy and open competition intended to guide those who are granted the right to use the public airwaves. The Commission has traditionally exercised jurisdiction over abusive practices on the public, even while recognizing the ultimate jurisdiction of Congress to pass laws outlawing the practice. As such, the Commission plays an essential role overseeing and informing Congress on the status of payola. This role and responsibility has never been greater and more important than right now, as we move from the analog radio world to the digital radio world.

The Commission has not, to date, adequately examined payola's impact on DAB, and even more importantly, whether and in what way DAB will promote the development of new forms of payola. Recording artists cannot and should not be subjected to a new generation of DAB payola. Examining and playing a role in preventing the continuation of older forms of payola, and the imposition of new forms of payola, should be a top priority of the Commission.

The following is offered so that the Commission can better understand the dynamics and history of payola. With a better understanding, the Commission may be able to incorporate, as much as possible, preventive measures into the proposed DAB regulations, update its analog regulations and properly advise Congress on taking further measures. The brief history is taken almost verbatim from a Statement on Radio Issues written by a coalition of artist organizations and released in 2002.[1]

Payola – the practice of paying money to people in exchange for playing a particular piece of music – has a long history in the music industry. The practice didn't garner much public attention until the late 1950s and 1960s when rock and roll disc jockeys became powerful gatekeepers determining what music the public heard. Federal laws were passed starting in the 1960s forbidding the direct payment or compensation of disc jockeys or other radio staff in exchange for the playing of certain records unless such payments were announced over the air.

The various laws and hearings from the 1960s-1970s muted the prominence of payola for a while. However, payola-like practices eventually resurfaced, but in a more indirect form. Standardized business practices now employed by many broadcasters and independent radio promoters result in what we consider a *de facto* form of payola.

The new payola-like practices take a number of primary forms. Radio station group owners establish exclusive arrangements with “independent promoters," who then

[1] See “Joint Statement on Current Issues in Radio” (May 24, 2002) revised October 8, 2003. http://www.futureofmusic.org/news/radioissuesstatement03.cfm

guarantee a fixed annual or monthly sum of money to the radio station group or individual station. In exchange for this payment, the radio station group agrees to give the independent promoter first notice of new songs added to its playlists each week. Stations in the group also tend to play mostly records that have been suggested by the independent promoter. As a result of the standardization of this practice, record companies and artists generally must pay the radio stations' independent promoters if they want to be considered for significant airplay on those stations.

Another payola-like practice occurs after the music labels hire an “independent radio promoter” to legitimately promote their records to specific stations for a fee. Reportedly, certain indie promoters use the labels' money to pay the stations for playing songs on the air.

Some radio station networks have announced that they have stopped using independent promoters, while others continue to use the independent promoter system. Whether the networks keep using independent promoters or not, there is nothing preventing the networks from developing a new system whereby payments made by record labels are characterized as a sale for "information" or for some services rendered. Of course, the payments are charged back to the artist as "independent promotion costs."

An even newer form of payola occurs when radio networks – or specific stations – forcefully request recording artists to perform for free at network-sponsored concerts. Some of these shows may be characterized as a charitable event or simply as a "money

making" event. The pressure on recording artists to accede to playing these concerts for free speaks volumes about the lack of trust artists have in the integrity of the networks to actually play their music based on merit alone. So not only does the system continue to be corrupted, the artist loses a date that could have been for a fee-paying performance and the ability to play that market for the season.

In addition, licensees leverage their ownership of radio stations to force artists to perform at their concert venues or to use their concert promotion companies at the risk of losing airplay if they refuse.[2]

Payola practices result in “bottom line” programming decisions where questions of artistic merit and community responsiveness take a back seat to the desire of broadcasters to gain additional revenue. As a result, many new and independent artists, as well as many established artists, are denied valuable radio airplay they would receive if programming decisions were more objective. Furthermore, whatever form the pay-for-play takes, these "promotion" costs are often charged against the artist, so that the artist loses concerts or other revenue that would have been earned otherwise. This adversely impacts the ability of recording artists to succeed financially.

To protect the public interest, the Commission must seriously consider in what way payola will influence the new DAB world, as well as ways to eradicate these insidious

[2] We urge the Commission to read the summary judgment decision in Nobody in Particular Presents, Inc. v. Clear Channel Communications, 2004 U.S. Dist . LEXIS 5665 (D. Colo. 2004) for an explanation of these pernicious practices.

practices in the present analog world and the DAB world. The Commission should focus on developing means of prohibiting the use of independent promoters, payments to networks for playing songs without identifying the source of the payment, free concerts and the leveraging of radio play with the use of a licensee's other companies. If the music played on the radio – whether analog or digital – has less to do with the quality of the song than the economics of the business arrangement, how does this serve the needs of citizens? Before finalizing regulations on DAB, the Commission must investigate and address these issues, and take appropriate actions to ensure that artists will not suffer from the payola practices of the analog era in the new, exciting digital age.

IV. DAB Must Be Developed and Regulated In a Manner That Promotes Rather Than Hinders the Ability of Recording Musicians and Vocalists to Earn a Living As Creators

DAB appears to have great potential to reinvigorate radio. It may expand broadcast capacity, provide new opportunities for the growth of community dialogue on the air, broadcast more – and more varied – music including niche, genre and local music that is largely ignored on analog radio, and provide more and better public service. As the Recording Artist Groups indicated in our initial comments in this *NPRM*, we welcome these new capacities and hope that they will enhance our ability to reach out to new listeners and to expand our creative contribution to American culture. We believe that they will, as long as DAB is developed and regulated in a manner – and in an overall legal and business context – that recognizes the value of our creative contributions, that

protects our ability to survive financially, the ability of technologies to develop, the ability of consumers and communities to receive new and exciting services, and the ability of the relevant industries to grow in proper balance with each other.

In that regard, we believe it is critical for the Commission and all of the stakeholders to understand our creative work and the ways in which we earn our livings (or, sadly, fail to do so) in the current system. An understanding of the creative process involved in making sound recordings will, we believe, highlight the value of our artistic product and of our cultural contributions. And, an understanding of our compensation structures will make starkly clear why we are concerned that DAB may pose risks as well as opportunities for artists – and why DAB must only be developed in a way that protects rather than undermines our ability to earn compensation from sales and performances of our recordings.

A. Sound Recordings are Unique Works That Are Created by the Tremendously Hard Work of Talented Performers

In a world in which so much recorded music is all around us – on the radio, on the web, on TV, in movies, in stores, hotels, restaurants and every public place – it can be easy to forget that music does not actually materialize by some magic process at the push of a button. The recorded music that Americans, and people all over the world, so love to hear is actually created in a difficult and time consuming process that requires the innate talent, incredibly hard work and constant perseverance of many contributors. Without the

investments of time, money, heart and soul that artists make in their work, those recordings would never come into existence.

Songwriters often say that "it all begins with a song," and we wholeheartedly agree. Songwriters invest great talent, inspiration, hard work and ongoing efforts to create compelling works of art – the melodies and lyrics that make up the "musical works" that performers record. Like the recording artists we represent, many of whom are also songwriters, songwriters are creators who are essential to the music industry, and the business models in the new and developing digital world must adequately compensate them so that they can continue to create.

The sound recording, however, is something quite different from the song. As Harold Ray Bradley, the most recorded guitarist in history, often says, "It all starts with a song, but it doesn't end there." Songs are beautiful and unique works of art, but they are meant to be heard, and unless they are performed by musicians and vocalists, they can reach no one at all. It is when a song is recorded, and the recording is played and heard, that a song can reach out to hundreds of thousands or millions of people.

Recording musicians and vocalists breathe life into a song, not only by making it audible, but also by shaping its tone, style, rhythm, sound and color – interpreting it, and in the process, creating yet another unique work of art, the recorded musical performance. Two recordings of the same song can be utterly different, and reach completely different levels of success. In the 1960s, Ray Price recorded the Kris Kristofferson song "Help Me Make

It Through the Night" in a Frank Sinatra, two-beat style. Ray Price was a popular recording artist, but that recording was not a hit. In 1970, Sammi Smith recorded the same song, and with it won a gold record, a Grammy, and a #1 spot on the country charts. What was different? The song was the same great song in both versions. But in the Sammi Smith version, she contributed her beautiful, seductive voice. And the musicians made an important creative contribution as well – they slowed the song down and put it into a straight 8ths rhythm that gave Sammi Smith the space she needed to put a lot of feeling into the lyrics.[3]

Recording artists work long and hard at their craft, whether they are the "featured" or "royalty" artists whose names are most associated with the recording, or whether they are the studio musicians and vocalists whose performances form the musical backbone of the recording. There is no one model of how the recording process works, but the bottom line of every kind of recording is the talent, skill, time, effort and work required of the performers in the process.

One example of the recording process from the point of view of a royalty artist is the process that culminated in Jennifer Warnes' 1986 recording *Famous Blue Raincoat*, which was a tremendous commercial, critical and audiophile success.[4] She conceived of

[3] Guitarist Harold Ray Bradley described and analyzed the two recordings of "Help Me Make It Through the Night" in detail in his written testimony submitted to the Copyright Arbitration Royalty Panel that set certain Section 114 compulsory license rates for digital performances of sound recordings. Direct Case of the American Federation of Musicians of the United States and Canada, In the Matter of: Digital Performance Right in Sound Recordings and Ephemeral Recordings, Docket No. 2000-9 CARP DTRA 1&2, April 2001. Bradley performed on the Ray Price recording.

[4] Jennifer Warnes described the creative process involved in *Famous Blue Raincoat* in her written testimony written testimony submitted to the Copyright Arbitration Royalty Panel that set certain Section 114 compulsory license rates for digital performances of sound recordings. Direct Case of the American

the album as a tribute to songwriter Leonard Cohen, and in it, she reframed many of his songs from folk renditions to edgy combinations of acoustic, electronic and synthesized sounds. She invested a year of her time and worked on all the creative and practical elements necessary to bring her concept to fruition. She not only contributed the featured vocals, but also secured the funding, chose material to be recorded, rented the studio, found musicians, and with the collaboration of the musicians and other fellow-artists she chose, arranged, recorded, mixed and mastered the album. It takes innate talent to be a recording artist, but it takes much more as well. Royalty artists – whether they are primarily vocalists like Jennifer Warnes, primarily instrumentalists, or a combination of all the creative disciplines like singer-songwriter-instrumentalists – work hard for many years to develop all the skills and abilities that allow them to express their creative vision in the recording process. The whole course of their professional lives, and each individual recording project, represent investments of time, skill, energy and plain hard work.

Although the listening public often does not learn the names of most of the studio musicians and vocalists who perform on the recordings they love, the creative contributions of those performers are also critical to the sound and success of the recordings. The "background" musicians and vocalists in a recording session style the song with intros, fills, chord changes, solos, tempo and rhythms. Their talent, insight and skills are necessary to achieve a truly great arrangement, interpretation and performance.

Federation of Television and Radio Artists, In the Matter of: Digital Performance Right in Sound Recordings and Ephemeral Recordings, Docket No. 2000-9 CARP DTRA 1&2, April 2001.

A classic (and frequently analyzed) example that beautifully illustrates the work and collaboration in the recording studio is Patsy Cline's recording of the Willie Nelson song, "Crazy" – the number one jukebox hit of all time.[5] Seven studio musicians were called to that session, and with producer Owen Bradley they created a perfect arrangement and performance that transformed the song into a timeless hit. For example, bass players Bob Moore and Harold Ray Bradley are said to have achieved the apex of country bass with the rhythms they created together,[6] Walter Haynes added a tremolo sound on pedal steel and Floyd Cramer added a blues element on the piano, all of which, together with the inimitable background vocals of the legendary Jordanaires, are an integral part of the greatness of the recording. Like the royalty artists, studio musicians and vocalists must have innate talent, but they also must work hard to develop their skills and hone that talent in order to deliver the performances that transform songs. It is a lifetime career, and takes an investment of all their time and abilities.

B. Performers Depend on Combining Many Income Streams

The popular image of recording artists as fabulously rich celebrities is very far from the reality. Only a very few creators in the music business earn substantial livings. In its comments, the Recording Industry Association of America (RIAA) verifies this fact, noting that only 5 percent of releases actually sell enough records for the labels to

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[5] Guitarist Harold Ray Bradley described the "Crazy" recording session in his written testimony submitted to the Copyright Arbitration Royalty Panel that set certain Section 114 compulsory license rates for digital performances of sound recordings. Direct Case of the American Federation of Musicians of the United States and Canada, In the Matter of: Digital Performance Right in Sound Recordings and Ephemeral Recordings, Docket No. 2000-9 CARP DTRA 1&2, April 2001.

[6] "30 Essential Bass Albums You Must Own," *Bass Player*, June 1997.

"recoup" costs.[7] Most artists fail to survive at all in the industry – despite being gifted musicians or vocalists who work hard at their craft. And, of the successful creators – defined as those who do manage to survive financially – most either struggle financially or earn no more than a modest living. They are ordinary, hard-working Americans. What sets them off from the general population, other than their musical talent, is the fact that living by their talents does not provide them with a normal job or a steady paycheck. Instead, they are participants in the unique and complicated music industry, and earn their livings – or don't – from complicated statutory and contractual arrangements that produce sporadic and varied income streams.

1. Traditional Income Streams: Sales, Touring, Merchandising

a. Royalty Artists. Royalty artists are not paid for all of the many varied creative tasks they perform when they make a recording. Whether they are vocalists or instrumentalists, they are, for the most part, small businesspersons or entrepreneurs, with a complex web of creative and business relationships developed to enable them to make their recorded product.

Typically, royalty artists enter into complex contracts with recording companies in which the companies invest in the production and promotion costs and then make royalty payments to the artist based on sales. Although the recording company makes an up front investment, the royalty artist agrees to pay the production and promotion costs back to the company out of sales revenue via

[7] *See* Thomas M. Lenard, Ph.D., "The Economic Impact of Digital Audio Broadcasts on the Market for Recorded Music," (June 2004) at 10.

recoupment from the artist's sales royalties. In most cases, much of the additional costs of marketing and publicity, videos, tour support and other promotions are recouped as well, all from the artist's small share of the pie. The bottom line is that a royalty artist can be quite successful in terms of sales and artistic value without making a substantial profit on recording sales. Sales are crucial to recognition, survival and success – but they almost never produce sufficient income on which to live. As a result, royalty artists must also depend on other income streams such as live concert fees, T-shirt sales and other merchandising, songwriting income (for those who are also songwriters), licensing the use of their recordings in movies or in other media, and other business opportunities to help them make a living.

b. Studio Musicians and Vocalists. Like royalty artists, studio musicians and vocalists are far from the typical employee of a standard business. They don't have nine-to-five jobs but work in recording sessions for a host of different employers whenever they are called. And, like royalty artists, they historically are dependent upon the sales of recordings as a critically important part of their income.

Musicians working under the AFM's Sound Recording Labor Agreement – which is negotiated with all five major recording companies and later agreed to by hundreds of small and independent companies – earn scale wages, pension contributions, health and welfare payments, and "re-use" fees if the recording

later is used in another medium like a movie. In addition, musicians earn deferred income based on sales. Signatory record companies are required to make contributions to the Sound Recording Special Payments Fund. These contributions are made according to negotiated formulas based on sales. The Fund is then distributed annually to recording musicians in accordance with a formula based on their scale earnings in the industry over a five year period. It is important to note that royalty musicians also earn these benefits when they record for signatory companies.

Similarly, studio vocalists working under the AFTRA National Code of Fair Practice for Sound Recordings – which is negotiated with all five major recording companies and later agreed to by hundreds of small and independent companies – also earn scale wages, contributions to the AFTRA Health and Retirement Funds, and "re-use" fees if the recording later is used in another medium. Health and welfare contributions are based on earnings (not just scale wages, but all earnings including royalty earnings for royalty artists) and thus form an important source of health care coverage for vocalists. Under the Sound Recordings Code, vocalists also benefit from sales because they receive "contingent scale" (i.e., additional) payments when the records on which they perform reach certain sales plateaus. As noted, royalty vocalists also earn these benefits when they sing on others' recordings for signatory companies.

The AFM and AFTRA are proud of the standards they have set in the recording industry, which allow many musicians and vocalists to earn decent livings in an occupation that is characterized by uncertainty and intermittent employment. But overall, the earnings of studio musicians and vocalists, like those of royalty artists, are modest, and dependent on the ability to add together income from as many engagements and as many sources as possible. Deferred income from sales is a crucial part of musicians' earnings. And, of course, if signatory labels don't invest in recording sessions, there is no recording work for them in which to earn union-negotiated scale, health and welfare and pension payments.

c. Threats to Sales Income. As should be plain from the business descriptions above, a critical component of the income streams historically relied upon by both royalty artists as well as studio musicians and vocalists is the income stream derived from the sale of recordings.

However, it cannot be assumed that income derived from sales will continue to play the same central role in the financial survival of recordings musicians and vocalists in the music industry of the future. Although much controversy surrounds the reasons for the severe reductions in sales experienced in the United States and abroad in the last few years, there is no controversy about the fact that sales have dropped precipitously. RAC's initial comments in this *NPRM* described many ways in which music industry contraction has had deleterious effects upon recordings artists, including the loss of recording contracts, the

diminution of budgets for the production, promotion and marketing of recordings which, in turn, has led to the loss of recording and sales opportunities, and, overall, lowered incomes and increased disincentives to pursue full time music careers.[8] Studio musicians and vocalists also are badly hurt by the industry contraction, with employment opportunities becoming even more intermittent as recording budgets decrease. Another stark example of the effect of decreased sales on studio performers is the decrease in Sound Recording Special Payments Fund collections from recording companies that are signatories to the AFM Sound Recording Labor Agreement. As described above, these contributions are based on sales and have decreased from $21,183,689 in 2002 to $14,852,222 in 2003 – a 30% reduction in collections which translates into a similar reduction in Special Payments Fund payments to studio musicians. Since these payments form a significant portion of musician compensation, such a decrease is devastating to musicians.

A wide variety of factors have affected and will continue to affect the importance of sales in the recording industry. Without attempting to quantify the effect of unlawful peer-to-peer file-sharing, we note that it is obvious that the ability to obtain free digital copies of recordings changes the dynamic of the historical industry model that was based on sales of those recordings.

Equally important for the present discussion, many new forms of digital music delivery have developed and continue to develop that do not depend on the sale of

[8] *See* "Comments of the Recording Artists' Coalition" (June 2004) at 3.

a copy (whether a physical copy or a digital copy) of a recording, but rather on the opportunity to *listen* to a particular song or a particular type of music whenever the consumer chooses. These new services are different from traditional, over-the-air analog radio in that they provide much better (i.e., digital) sound quality and offer much more consumer control. Such services include: services that are free to consumers like genre-specific (but non-interactive) webcasts and radio simulcasts on the internet; a wide variety of digital subscription services including digital music channels on subscription cable or satellite television such as those provided by Music Choice and DMX on cable, DirecTV and Echostar; the new digital satellite subscription radio services XM Radio and Sirius; and, interactive digital subscription services like Napster 2.0 and Rhapsody that allow subscribers to hear whatever songs they choose whenever they choose to hear them. No one knows exactly what the future will bring, but no one doubts that as all of these digital services develop and new ones are created, the sale of a music "listen" will increase in importance relative to the sale of digital or physical copy of a recording.[9]

2. New Income Streams: Digital Performance Royalties

a. The Lack of An Analog Performance Right. In the US, recording artists do not receive income based on the performance of their recorded work on the radio, because such broadcasts are not protected by a performance right. Musical works, by contrast, are protected by a performance right – as they should be – so that

[9] *See* Appendix A of these reply comments for a chart that illustrates the payments made by various broadcasters and digital services to performers, songwriters and copyright owners.

radio airplay of a recording results in the payment of a performance royalty to the songwriter who wrote the song. But because the sound recording itself is not protected, the musicians and singers who recorded the song and brought it to life with their unique interpretation receive nothing. Thus, for example, every time the Patsy Cline recording of "Crazy" is played on the radio, the songwriter Willie Nelson is entitled to royalties, but Patsy Cline and the studio musicians and singers who created her perfect arrangement – Harold Ray Bradley, Bob Moore, Walter Haynes, Floyd Cramer, Owen Bradley and the Jordanaires – receive no payment at all.

b. The Digital Performance Right. The emergence of the digital era led recording artist representatives to urge Congress to provide some new financial protection to artists and recording companies. In light of the expectation that new digital music services were likely to undermine sales and hence to undermine the ability of artists and companies to survive financially, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 ("DPRA"), which created an exclusive performance right in digital performances of sound recordings, limited by exemptions for terrestrial radio and by a compulsory license for certain non-interactive digital music services. As we detail below, in creating the new right Congress was careful to ensure that recording artists would receive new income streams.

c. Interactive Services and the Exclusive Digital Performance Right. Under the DPRA, copyright owners have the exclusive right to license interactive digital music services, and recording artists are entitled to share in the resulting license proceeds in accordance with their royalty contracts or other applicable agreements. Thus, the new internet interactive subscription services like Rhapsody and Napster 2.0 – services that offer subscribers the ability to listen to songs of their choice on demand – must obtain licenses from the sound recording copyright owners. As Congress provided, royalty artists share in this license income in accordance with their royalty contracts, and studio musicians and vocalists share in this license income pursuant to an agreement between the major recording companies, the AFM and AFTRA.

d. Non-interactive Services and the Compulsory License. As noted above, the DPRA limits the exclusive digital performance right by creating a compulsory license for certain types of non-interactive digital music services. Several different types of services are entitled to use the compulsory license. The first of these were the digital music channels on cable and satellite subscription TV, such as those provided by DMX or Music Choice cable television and DirecTV and Echostar satellite television. Music Choice's description of its service makes clear that even non-interactive services attract listeners by offering increased choice as well as high sound quality and the absence of commercials: "mellow jazz riffs, pulsating dance beats and classic rock … [w]ith up to 36 channels of

digital-quality sound … you have a music library that you can play through your television or stereo …[c]ommercial-free, 24 hours a day." [10]

Next, in 1998, Congress made clear that the newly developing, non-interactive webcast services were also covered by the compulsory license. These webcasting services provide thousands of genre-specific digital radio stations on the internet. In addition, the new satellite subscription radio services – XM Radio and Sirius – are covered by the compulsory license. XM Radio offers over 100, and Sirius offers over 60, commercial-free, highly tailored and genre-specific music channels broadcasting high quality digital sound. Like the digital music channels on subscription TV, webcasters and satellite subscription radio services enable listeners to hear high sound quality and commercial free music tailored to their interests.

Each of the services broadcasting and webcasting under the DPRA compulsory license pay the license fees set for their category of service. Artist shares of these compulsory license fees are specified by law. The DPRA specifically provides for "featured" or royalty artists to receive 45% of the license proceeds from the compulsory license, and because this money is paid directly to artists, it is not recoupable as part of their recording deals. Similarly, Congress specifically provided that "non-featured" or studio musicians and vocalists must receive 5% of the compulsory license fees (2-1/2% for musicians and 2-1/2% for vocalists).

[10] *See* "Music Choice on DirecTV Service" http://www.directv.com/DTVAPP/see/MusicChoice_chandescriptions.dsp.

SoundExchange, a collective governed equally by recording company and artist representatives, collects the compulsory license fees and distributes the royalty artists' 45% share directly to them. The non-featured artists' share is paid to a separate trust which was appointed pursuant to the statute and which undertakes to identify, find and pay studio musicians and vocalists.

The DPRA is a crucial piece of legislation because it finally established a framework under which recording artists are compensated for the broadcast or transmission, i.e. for the public performance, of their work. As yet, the new digital performance income streams are small, but royalty artists, studio musicians and vocalists have a vital stake in the growth of this new market for their work and its potential to expand as an important income stream, one of the many streams necessary for them to earn a living. This new income is especially critical as the public increasingly chooses to "consume" music not by buying copies – whether in the form of CDs or digital downloads – but by seeking out "listens" on free or subscription digital music services that allow them to choose a particular song, or a certain type or genre of music, that they want to hear at a given time.

C. DAB Poses Serious Risks to Artists' Compensation Structures

Digital Audio Broadcasts, as described by many commenters in this *NPRM* and *NOI,* may have the capacity to totally re-tool radio. In his comments, Jim Griffin described the kinds of digital radio receivers that are coming to market – receivers that will be able to

rewind, buffer and record songs or shows off the radio.[11] Moreover, listeners will be able to program the receivers of the future automatically to scan for specific content and to make permanent copies of chosen songs.[12] With DAB, members of the public will receive what they want, when they want it. They will no longer have to purchase product or even "listens."

For all the positive promise of DAB, this transition also poses serious risks to artists if it is not regulated and developed in a manner, and in a business and legal environment, that enhances rather than reduces the ability of artists to be compensated for the creative work they do when they record music. Two distinct aspects of the risk posed by DAB must be understood: the way it may replace sales and the way in which it competes with DPRA-covered services that pay artists.

1. DAB May Replace Sales, and Thus Reduce Crucial Income

In fact, DAB has the potential to replace sales in two completely different ways. To the extent that DAB vastly increases the amount and variety of music programming as well as the ability of licensees to deliver and for consumers to find precisely what they want to hear exactly when they want to hear it on the radio, DAB will enable the public to substitute "listens" for sales in a way that traditional analog radio – which is hampered by poorer sound quality, lack of personalization, lack of interactivity, and the pervasiveness

[11] *See* Jim Griffin ""Report of Cherry Lane Digital LLC on Digital Audio Broadcasting for the Recording Industry Association of America" (June 2004).
[12] *See* Lenard, at 12-14; Griffin at 2, 4-12.

of undesirable advertising – cannot and does not.[13] Of course, to increase the amount and variety of music programming is very desirable, and we welcome the new DPRA-covered services like XM Radio, Sirius and the webcasters, which do exactly that. But those DPRA-covered services provide some compensation to artists. DAB "listens" that indirectly substitute for sales (and for paid "listens" as well) but that do not compensate artists may hurt rather than help us in the long run, if DAB is developed without a public performance royalty.

Equally significantly, the initial comments have shown that DAB has the capacity to develop into a simple, effective and potentially devastating *distribution* system – a direct substitute for sales.[14] Consumers may be able to build libraries of digital copies by programming receivers to *automatically* "harvest" or "cherry pick" the songs they want, and make copies for their permanent use and possibly even further distribution.[15] In this regard, DAB may have extraordinary advantages over peer-to-peer file-sharing, which, after all, is illegal and involves cumbersome software, the risks of infecting one's own computer with spyware and viruses, and the likelihood of encountering spoof files or other undesirable files.[16] DAB will similarly have compelling advantages over copying music from other, DPRA-covered digital services, because such copying requires complicated software products and a level of non-trivial technical expertise. Even Congress recognized the risks presented by digital transmissions, and thus placed

[13] Lenard at 12-13.
[14] *See* Jim Griffin ""Report of Cherry Lane Digital LLC on Digital Audio Broadcasting for the Recording Industry Association of America" (June 2004)
[15] *See* "Comments of the Recording Industry Association of America" (June 2004) at 23.
[16] *See* Griffin at 34; Lenard at 27-28.

technological restrictions on DPRA covered services.[17] In short, more than any other existing service, DAB has the capacity to completely supplant sales – with no compensation to artists at all.

2. DAB Also May Undermine Digital Performance Right Income

Indeed, DAB may also undermine the compensation that we are beginning to receive from the new digital services that focus on "listens" and with which DAB will compete directly. The initial comments show that DAB has the capacity to develop into the functional equivalent of the new DPRA-covered services -- both the non-interactive digital music services that are covered by the DPRA's compulsory license that broadcast genre-specific digital quality programs (i.e., the webcasters, satellite radio services, and music channels on subscription TV), and also the interactive music services that are covered by the DPRA's exclusive performance right that allow each subscriber to hear specific songs on demand. In fact, Congress intended that the types of services that DAB will provide should be covered by a performance license that enables copyright owners and performers to earn income and have some control over distribution.

It is ironic that iBiquity and NAB in their initial comments argue that DAB should not be disadvantaged vis-à-vis the emerging digital services with which they intend to compete,

[17] 1) to cooperate with copyright owners to prevent recipients from using software or devices that scan transmissions for particular sound recordings or artists (17 U.S.C. 114(d)(2)(C)(v)); 2) to allow for the transmission of copyright protection measures that are widely used to identify or protect copyrighted works (17 U.S.C. 114(d)(2)(C)(viii)); and 3) to disable copying by a recipient in the case where the transmitting entity possesses the technology to do so, as well as taking care not to induce or encourage copying by the recipient (17 U.S.C. 114(d)(2)(C)(vi)).

for in fact they enjoy a huge but unacknowledged advantage over these services. The DPRA-covered digital music services must pay sound recording copyright owners and performers for the content upon which they build their businesses.[18] Why should DAB be allowed to compete with them on such unfair terms? And how will performers survive if we cease to receive income either from sales or from the new digital performance royalties from DPRA-covered services, because DAB has undermined or replaced them all?

V. DAB Development Must Account for Artists' Needs to Protect Current Income Streams and Develop New Ones

A robust DAB should benefit everyone. It should provide consumers with more choices, and enhance localism and diversity on the radio. It should allow electronic manufacturers to develop new technologies and to sell more products. It should allow broadcasters to develop new services and compete in the new marketplaces.

But these benefits for consumers and technology must not be pursued at the expense of artists, lest the benefits prove illusory. If recording artists do not share in the increased benefits and revenues flowing from DAB – and if, as we fear, their existing revenue sources are undermined by DAB – none of DAB's benefits will be realized, because ultimately there will be no recordings for broadcasters to broadcast, for consumers to listen to and record, or for technology to capture and transmit.

[18] See Appendix A.

As the Copyright Office recently advised Congress,

> In the absence of corrective action, the rollout of digital radio and the technological devices that promise to enable consumers to gain free access at will to any and all the music they want will pose an unacceptable risk to the survival of what had been a thriving music industry and to the ability of performers and composers to make a living by creating the works the broadcasters, webcasters and consumer electronic companies are so eager to exploit because such exploitation puts money in their pockets.[19]

The concern expressed by the Copyright Office is not merely abstract or hypothetical. It is concrete and real. We hope the reality – and the human dimension – of the threat has been painted by our detailed explanation of how we work and how we are compensated. We also hope that our analysis of the threat makes clear that our concerns do not arise because we are anti-consumer or anti-technology, but because we believe that the needs of consumers and the advance of technology only will be well-served in the long run if they are balanced with the need of artists to protect current sources of income and develop new ones if they are to survive and continue to create recordings.

[19] Statement of David Carson, General Counsel, United States Copyright Office, before the Subcommittee on Courts, The Internet, and Intellectual Property of the House Committee on the Judiciary at 34 (July 15, 2004).

A. The Audio Home Recording Act and Digital Audio Broadcasting

The Commission specifically asked about the relationship between the Audio Home Recording Act ("AHRA") and the issues presented in its *NOI.* The AHRA does not address, nor was it designed to address, the risks presented by DAB. As a result, any reliance on the AHRA is misplaced. The AHRA was designed to regulate threats presented by serial copying, whereas DAB creates threats to sound recording *distribution* and the ability of new services to flourish.

Let us be clear. Our concern is not with the type of traditional consumer home taping that is permitted by the AHRA. Our concern is not that DAB may develop to allow mere time- and place-shifting, as consumers are allowed to do now by taping a broadcast that they hear. The capacity *automatically* to locate and copy specific recordings without even listening to their broadcasts as described in the initial comments is *not* the equivalent of ordinary consumer home taping known today, but rather involves functionalities that amount to an entirely new order of copying.[20] Our concern is that these functionalities may allow DAB to broadcast our work in a manner that devastates our income from sales, without providing adequate or even any replacement compensation. The suggestions in various opening comments that the AHRA will fill that gap provides us with no comfort, because it appears unlikely that many, if any DAB receivers will be covered by the AHRA, and it is certain that the AHRA, which was not

[20] *See* "Report of Jeff Hamilton, Hamilton Technologies, for the Recording Industry Association of America" (June 2004) at 6; Griffin at 26; Lenard at 16.

designed to deal with the current technological and business realities, will in no way provide adequate replacement compensation.[21]

B. Digital Audio Content Control

In the *NOI*, the Commission noted that the RIAA had raised the issue of "the possibility of indiscriminate recording and Internet redistribution," and asked for specific comment on whether a problem exists and whether the Commission should involve itself in the matter.

In light of the facts we have explained in such detail above, we believe the answer to these questions is an emphatic "yes." DAB has the potential to foster not the kind of ordinary home copying that exists in the analog radio universe, but broadcasting and copying of an entirely new order and nature that may compete effectively – even devastatingly – with all the current distribution systems upon which we rely, but which unlike them will pay us nothing.[22] There can be no doubt that this is a problem. Ultimately, all recording artists will be affected, some careers will likely end, and musical

[21] As the RIAA noted in its initial comments, the AHRA was designed only to regulate threats presented by serial copying – *not* the threat of new technologies creating radically new distribution systems that provide no compensation for artists or recording companies. "Comments of the Recording Industry Association of America" (June 2004) at 68.

[22] Nor are we alone in answering this question in the affirmative. In recent testimony before the Subcommittee on Courts, the Internet and Intellectual Property of the House Committee on the Judiciary, the Copyright Office asked the question "Digital audio broadcasting – Does it pose a threat to copyright owners?" and answered with a firm yes, noting that "digital audio broadcasting raises many of the same concerns and fears voiced by the record industry when digital technologies firms made their appearance in the nineties, and these concerns are even more valid today." Carson *supra at* 29-34.

culture will be poorer for everyone. Appropriate content protection and usage rules are necessary responses to the current challenge. [23]

Some of the Recording Artist Groups might wish for a perfect world in which content protection and usage rules were not necessary because the social and economic structures existed to assure us and our recording company partners large and small of sufficient compensation and economic incentives to allow us to create. Plainly, however, that is not the current real world. In the current world, content protection and usage rules are needed. In order to prevent economic devastation to recording artists, the Commission should protect them by preventing certain forms of unauthorized copying and redistribution. We urge the Commission to initiate a rulemaking promptly to adopt content protection measures that can be implemented simultaneously with the issuance of final service rules for DAB. The parameters and implementation of content protection rules can be addressed in the rulemaking proceeding.

Contrary to the suggestion made by some of the commenters, a rulemaking on the issue is far from premature. If the Commission waits to address these concerns until the harms we have described are fully developed in the marketplace, it will face powerful objections

[23] DAB's potential interactivity exacerbates our concern. Interactive performances, even if by FCC licensed digital audio broadcasters, must obtain a license from the copyright owner. 17 U.S.C. 114(d)(1)(A). The Commission must ensure that the broadcasters and the consumer electronics manufacturers are not permitted to thwart the Congressional intent to require a performance right on interactive DAB just by parsing the mechanics of the transmissions so that the broadcasts are not themselves interactive, but because of the receivers, the receptions create interactive performances. This is a distinction without a difference and directly contradicts Congressional intent -- either the interactive performance of the sound recordings must be licensed or the receivers must not be permitted to enable interactive uses. The Commission has a duty to ensure that there are appropriate restrictions in place so that the receipt of digital broadcasts do not constitute an unlicensed interactive performance. This can best be done after thorough consultation with the Copyright Office and, perhaps, Congress.

that any regulation is too late because of the existence of "legacy" technology and entrenched consumer expectations. The time for a rulemaking that results in appropriate protections for musicians, singers and record companies, while protecting valid consumer interests and fostering appropriate technological development, is now, because the present time is when the issues can be considered and balanced fairly. That full and fair consideration requires the participation of consumers, broadcasters, recording companies, electronics manufacturers – and, not least, artists. And the values it weighs must include – again, not least – the importance of our economic survival and the means to ensure it.

C. The Need for a Performance Right

The digital performance right in sound recordings embodied in the DPRA reflects important federal policies that the Commission is not free to ignore. In the DPRA, Congress created a structure that balanced the growth of new digital music services with the rights of copyright owners and performers to "control the distribution of their product by digital transmissions" and to derive economic benefit from public digital performances of their work.[24] As we have explained above, DAB has the potential to become the functional equivalent of the digital music services that, under the DPRA, must negotiate with and pay copyright owners and performers – but without the kind of protections for copyright owners and recording artists that the DPRA affords.[25] If DAB is not to be allowed to undermine and destroy the DPRA balance, the Commission must

[24] S. Rep. No. 104-128, at 15 (1995), *reprinted in* 1995 U.S.C.C.A.N. 356 ("DPRA Report").
[25] The Copyright Office already has noted that the technological advances embodied in DAB "threaten to disrupt the careful balance Congress struck between the recording industry, on the one hand, and the purveyors of new digital technologies, on the other, in the DPRA and the DMCA." Carson testimony p. 32.

harmonize the rollout of DAB with the DPRA policies that protect the income streams of copyright owners and performers.

The Commission should not engage in "the formulation of communication policies – with myopic disregard of other important national policy objectives."[26] The Copyright Office recently advised Congress that the transition process to DAB "must include a careful analysis of copyright policies." [27] The Copyright Act secures the benefits of creativity to the public by encouraging individual creative effort by enabling creators to reap the rewards of private gain. The rollout of DAB without a performance right threatens this delicate balance.

DAB has developed, and will likely continue to develop, differently from what was envisioned by Congress in 1995 when it exempted terrestrial radio stations from the digital performance right. DAB will, in fact, provide the type of service that Congress intended to be covered by the performance right it established in the DPRA. Congress said:

> The limited right created by this legislation reflects changed circumstances: the commercial exploitation of new technologies in ways that may change the way prerecorded music is distributed to the consuming public. It is the Committee's intent to provide copyright holders of sound recordings with the ability to control the distribution of their product by digital transmissions, without hampering

[26] *In re Tender Offers and Proxy Contests,* Policy Statement, MM Docket No. 85-218, FCC 86-67, ¶ 20 (rel. Mar. 17, 1986) ("*Tender Offer Policy Statement"), appeal dismissed sub nom. Office of Communications of the United Church of Christ v* FCC, *826 F. 2d 101 (D.C. Cir. 1987).*
[27] Carson*, supra* at 34.

> the arrival of new technologies, and without imposing new and unreasonable burdens on radio and television broadcasters, which often promote, and appear to pose no threat to, the distribution of sound recordings.[28] (emphasis added)

As we have shown, even with content controls, DAB threatens to develop into broadcasting which will be so personalized and so narrow that it will indeed threaten both the distribution of sound recordings and the new business models developing under the DPRA. The receivers pose an additional risk as DAB receivers might include services enabling consumers to rewind, skip, or scan the channels to receive only the recordings they want. Consumers may also be able to program the receivers to record, store, and catalogue specific songs. Users will be able to put these recordings on peer-to-peer services for the whole word to download for free. With DAB, members of the public will no longer have to purchase product or even "listens."

We urge the Commission to delay DAB's rollout until Congress has had a chance to enact a performance right. While the Commission may have already authorized the initial transition to DAB, any authorization of differentiated services, such as multi-casting and subscription services, would contravene Congress' carefully balanced scheme and must be delayed until Congress has had an opportunity to act.

[28] S. Rep. No. 104-128, at 15 (1995), *reprinted in* 1995 U.S.C.C.A.N. 356 ("DPRA Report").

VI. Conclusion

In the current music business, performers must patch together a living from many activities including live performances, merchandising, and any business opportunity we can develop. Compensation from recording must be a key piece of the compensation puzzle for those of us who wish to record, if we are to continue to make the kind of recorded works which have been of such great artistic and commercial value in the U.S. As it stands now, recording artists have two critical ways of earning money from recording – sharing in the proceeds of sales (as well as of the industry growth resulting from sales), and receiving digital performance royalties from the new DPRA-covered digital music services. Simply put, DAB must not be developed in a way that undermines those key compensation streams and does not replace them with anything new.

The music industry must change, and we need to encourage new creative legitimate models that service customers in ways that the customers want. But as much as we support the development of new technologies and new models – and we do support them because we believe that they can be good for our art – the Commission must be sure not to upset the careful balance Congress struck lest it harm our ability to survive as creators.

We realize that the task of evaluating and adjusting the complex business and legal relationships in the music industry is daunting. But, if DAB goes forward without this analysis and without adjustments and protections for working musicians and vocalists, a

disservice will be done not only to recording artists but to the public and to the technology, broadcasting, transmission and recording industries who depend upon our creative product. Moreover, the analysis cannot be done and the prescriptions cannot be reached without the active participation of all the stakeholders – not just the industry representatives, but also representatives of consumers, and, critically, of the artists whose creative work is at the core of the industries.

In addition, the transition to DAB cannot be viewed in isolation but must be considered together with or after the Commission's media ownership and localism proceedings. Thus, the Recording Artist Groups urge the Commission to put a stop to further DAB decisions and refrain from authorizing differentiated services until it is able to accomplish the following:

- Complete the work of the Localism task force, including the *Notice of Inquiry*, further field hearings and any official report from the task force,
- Complete the media ownership proceedings,
- Hold a series of public hearings examining how DAB deployment can enhance localism, competition and diversity,
- Delay the authorization of differentiated services, such as multicasting and subscription services, until Congress passes a performance right for sound recordings, and
- Conduct a rulemaking about the technical protections required to protect DAB transmissions from indiscriminate recording and internet redistribution.

We thank the Commission for providing Recording Artist Groups with an opportunity to file reply comments on this important issue. We look forward to participating in any steps to ensure that digital radio is developed and regulated in a way that supports and rewards recording artists, copyright owners and citizens.

Respectfully submitted,

_____/s/_____

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Dated: August 2, 2004

Revenue Streams for Artists, Songwriters and Copyright Owners based on the broadcast of their music

	Songwriter and Publisher	Royalty Artist	Studio Musicians/ Vocalists	Record Label/SRCO*
Analog broadcast radio stations pay: traditional commercial and non-commerical radio stations like WHFS or WAMU	ASCAP/BMI/SESAC (fees distributed to songwriter/publisher)	Nothing	Nothing	Nothing
DPRA-compliant non-interactive webcasting stations pay: webcasting stations like KPIG, Radio Free Virgin	ASCAP/BMI/SESAC (fees distributed to songwriter/publisher)	SoundExchange (45 percent of compulsory license fee paid directly to royalty artist)	AFTRA & AFM funds (5 percent of compulsory license fee)	SoundExchange (50 percent of compulsory license fee paid directly to SRCO)
DPRA-compliant satellite radio services pay: XM and Sirius	ASCAP/BMI/SESAC (fees distributed to songwriter/publisher)	SoundExchange (45 percent of compulsory license fee paid directly to royalty artist)	AFTRA & AFM funds (5 percent of compulsory license fee)	SoundExchange (50 percent of compulsory license fee paid directly to SRCO)
DPRA-compliant subscription music services pay: DMX and Music Choice	ASCAP/BMI/SESAC (fees distributed to songwriter/publisher)	SoundExchange (45 percent of compulsory license fee paid directly to royalty artist)	AFTRA & AFM funds (5 percent of compulsory license fee)	SoundExchange (50 percent of compulsory license fee paid directly to SRCO)
DPRA-compliant interactive internet and digital services pay: Real's Rhapsody Napster 2.0	ASCAP/BMI/SESAC (fees distributed to songwriter/publisher) and license with publisher	Paid by record label from direct licensing fee according to artist contract	Paid via AFTRA/AFM agreement with record labels	Direct license fee

Digital Audio Broadcasters should pay:

Songwriter and Publisher	Royalty Artist	Studio Musicians/ Vocalists	Record Label/SRCO
ASCAP/BMI/SESAC fees distributed to songwriter/publisher	Public Performance Royalty	Public Performance Royalty	Public Performance Royalty

* SRCO = Sound Recording Copyright Owner